IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 13TH JULY 2006 / 22ND ASHADHA,1928

Bail Appl..No. 4166 of 2006

(CRIME NO.266/2006 OF BALARAMAPURAM POLICE STATION)

PETITIONER:

P. RAVEENDRAN, S/O. PADMANABHAN,
PADMA VILASOM BUNGLOW, PALACHAL KONAM,
KATTACHALKUZHY P.O., BALARAMAPURAM, TRIVANDRUM.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A.4166/2006

DATED THIS THE 13TH DAY OF JULY, 2006

O R D E R

The petitioner is the accused of the offence punishable under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989, in short 'the Act', in crime No.266/2006 of Balaramapuram Police Station. The application is filed under Section 438 Cr.P.C. Section 18 of the Act state that 'Nothing in Section 438 of the Code of Criminal Procedure, shall apply in relation to any case, involving the arrest of any person on an accusation of having committed an offence, under this Act'.

2. Thus it is clear that an application, under Section 438 Cr.P.C. will not lie. The learned counsel for the petitioner, relying on Shanu v. State of Kerala (2000 (3) KLT 452), submitted that when the petitioner surrenders or produced on arrest, merely because the offence is triable by the Sessions Court,

denial of bail by the Magistrate is against law.

3. In Shanu's case cited above, the contention of the petitioner was that when an accused, under the Act, is arrested and produced, or surrendered before the Magistrate Court, he is refused bail, on the plea that the offence, in which he is accused, is triable exclusively by the Court of Sessions. In other words, what could be discerned from the interpretation is that the Magistrate do not apply the legal mind and refuse bail on the ground that the offence, under the Act, is exclusively triable by the Sessions Court. The counsel, therefore, submits that though the petitioner is not entitled for an order, under Section 438 Cr.P.C., because of the operation of Section 18 of the Act, he is willing to surrender before the Magistrate Court and in such event, the learned Magistrate may be directed to apply the principle contained in Shanu's case, cited above, and pass orders accordingly.

4. After hearing both sides and considering the submissions of the learned counsel for the petitioner, I am not inclined to grant an order, under

Section 438 Cr.P.C., because of the operation of, Section 18 of the Act. However, as the petitioner is all set to surrender before the Court below, I direct him to do so, on 19.7.2006 at 11.00 a.m. In such event, the learned Magistrate shall carefully go through the legal principles laid down in Shanu v. State of Kerala, applying his judicial mind, and pass appropriate orders, thereafter.

5. If an application is filed by the petitioner, on his surrender before that Court, after serving copy of the same to the APP, well in advance, the learned Magistrate shall pass an order on merit, as aforesaid, on the same day itself.

The application is disposed of as above.

J.M.JAMES
JUDGE

mrcs